



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL; CNR, RP

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 18, 2021 ("10 Day Notice"), pursuant to section 46; and
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 33.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 11:00 a.m. and ended at 11:18 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

The landlord stated that she owns the rental unit and confirmed the address. She confirmed her name and spelling and provided an email address for me to send this decision to her after the hearing.

At the outset of this hearing, I informed the landlord that she was not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure*. The landlord affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord. She had an opportunity to ask questions. She confirmed that she was ready to proceed with this hearing. She did not make any adjournment or accommodation requests.

Preliminary Issue – Dismissal of Landlord’s Application

According to the online RTB details for the landlord’s application, it states “abandoned applicant inaction.” It states that the landlord filed her application on September 14, 2021, and by November 14, 2021, she had not submitted the required documents for her application to be processed to proceed to a hearing. Therefore, the landlord’s application was considered abandoned with no further action required. The landlord confirmed that she received an email from the RTB on September 14, 2021, requesting the required documents. She claimed that she did not respond because she was confused and thought that she had already submitted everything.

I notified the landlord that since her application was abandoned and not processed, the required information was not submitted, and the application was not scheduled for a hearing, it was dismissed in its entirety, without leave to reapply. The landlord confirmed her understanding of same.

Preliminary Issue – Dismissal of Tenant’s Application

The landlord stated that she did not receive a copy of the tenant’s application for dispute resolution hearing package.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant’s entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

The landlord stated that the tenant vacated the rental unit on August 28, 2021, she took back possession, and she did not require an order of possession against the tenant. Therefore, I notified the landlord that I would not issue an order of possession to her. She confirmed her understanding of same.

Section 55(1.1) of the *Act* states the following:

55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Effective on March 25, 2021, the landlord is entitled to a monetary order for unpaid rent without filing a separate application. The tenant filed his application on August 23, 2021. As noted above, the tenant's application to cancel the 10 Day Notice was dismissed without leave to reapply.

I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. The notice indicates rent of \$6,200.00 was due on August 1, 2021, with an effective move-out date of August 27, 2021. The tenant claimed in his application that he received the notice on August 18, 2021, by way of posting to his rental unit door.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord stated the following facts. This tenancy began on October 1, 2021. Monthly rent in the amount of \$3,100.00 was payable on the first day of each month. A security deposit of \$1,550.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant failed to pay rent of \$3,100.00 per month from July to August 2021, totalling \$3,100.00. The landlord seeks a monetary order of \$6,200.00.

Analysis

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$3,100.00 for each month from July to August 2021, totalling \$6,200.00. Therefore, I find that the landlord is entitled to \$6,200.00 in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$1,550.00. No interest is payable on the deposit over the period of this tenancy. Although neither party made an application in relation to the security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$1,550.00, in partial satisfaction of the monetary award. I issue a monetary order in the landlord's favour for the balance of \$4,650.00.

Conclusion

I order the landlord to retain the tenant's entire security deposit of \$1,550.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$4,650.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Both parties' applications are dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 04, 2022

Residential Tenancy Branch